

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.31077 of 1997

Dated 23-04-2007

Between:

The Superintending Engineer, Panchayat Raj Circle, Khammam.

..... PETITIONERS

AND

The Industrial Tribunal-cum- Labour Court, Warangal & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.31077 of 1997

O R D E R:

Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Warangal in I.D.No.113 of 1996 dated 23-06-1997, the present writ petition is filed.

The second respondent-workman filed an application under Section 2A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') questioning the action of the petitioner herein in removing him from service from 03-01-1996 and for a direction that he be reinstated into service with continuity of service, back wages and other benefits.

In his claim statement, the second respondent-workman stated that he was appointed as an attender in the services of the petitioner herein in the month of August, 1994, that he has been working continuously without any interruption ever since and has been paid salary of Rs.1450/- p.m. and that the petitioner had extracted work from him regularly but had not paid salaries. The second respondent-workman claimed payment of salaries from April, 1995 onwards. It is the specific case of the second respondent-workman that since he was not allowed to mark his attendance in the attendance register from the month of February, 1996, he had got issued legal notice dated 03-04-1996 to the petitioner, but the petitioner had failed to give any reply to the legal notice. Alleging violation of Section 25-F of the Act, an application was filed by the second respondent before the Industrial Tribunal-cum-Labour Court, Warangal.

In the counter affidavit filed before the Tribunal, the petitioner herein denied the allegations made in the claim statement. Petitioner

stated that the second respondent-workman was engaged temporarily on daily wages in the month of August, 1994 when the office was newly sanctioned vide G.O.Ms.No.391, dated 30-06-1994. Petitioner also stated that, as there was no provision to make payment in his office, the same would be paid to the second respondent-workman soon after receiving the same and subsequently all attender posts were filled up by the competent authority and that the action of the petitioner in asking the second respondent-workman not to attend duty is fully justified as he was engaged purely on daily wages.

The second respondent examined himself as WW.1 and marked Exs.W.1 to W.6. He deposed that he worked as an attender in the petitioner's office from August, 1994 to April, 1996, that he was initially paid salary of Rs.1203/- p.m., and subsequently his salary was enhanced to Rs.1,450/-p.m. and that he was in continuous service. The Labour Court took note of the fact that from the attendance register, filed from the month of September, 1994 to September, 1995, it was clear that the second respondent-workman had worked for more than 240 days in the petitioner's office. Exs.W.4 and W.5 were the office orders issued by the Superintending Engineer (Panchayat Raj) Circle, Khammam, to the effect that the second respondent was allotted to work in the drawing branch under the Deputy Executive Engineers I & II. The Labour Court took note of the fact that in Ex.W.1, legal notice, the second respondent-workman had stated that he was appointed as an attender in the petitioner's office and was discharging his duties from August, 1994 to April, 1996 and that the petitioner had withheld salaries from the months of April 1995 till March, 1996. The Labour Court noted that, in order to rebut the evidence of the second respondent-workman, the petitioner had not adduced any evidence,

that from the oral and documentary evidence let in by the second respondent-workman, it was clear that he had continuously worked for more than 240 days as an atttender and that his services were terminated without notice and without being paid the benefits under Section 25-F of the Industrial Disputes Act, 1947. The Tribunal held that termination of the services of the second respondent-workman was in violation of Section 25-F of the Act and was therefore null and void. The petitioner herein was directed to reinstate the second respondent-workman into service with continuity of service but without backwages.

Learned Government Pleader would contend that, since the petitioner was appointed purely on temporary basis and till regular appointment was made, no right accrues in his favour to claim reinstatement. Learned Government Pleader would further contend that, since appointment in government service is required to be made only in accordance with the rules, the mere fact that the second respondent-workman continued in the office of the petitioner did not confer on him the right to claim reinstatement into service when the available posts were required to be filled up on a regular basis.

It must not be lost sight of that, in exercise of its certiorari jurisdiction, this Court is required to examine the validity of the award and not matters extraneous thereto. The only question which is required to be considered is whether the fact recorded by the Tribunal that the petitioner had put in more than 240 days of service in the 12 month period preceding his termination is based on the evidence on record or is a perverse finding based on no evidence. As is clear from the award, the second respondent- workman had not only examined himself as WW.1 but also marked Exs.W.1 to W.6. The Labour Court, relying on the attendance register from the month of September, 1994 to September, 1995, held that the petitioner had

put in more than 240 days of service in the 12 month period preceding his termination. Having held that the petitioner had put in more than 240 days of service preceding his termination, the Tribunal also noted that his services were terminated without notice and without complying with the statutory requirements of Section 25-F of the Act. Holding that such termination was null and void, the Tribunal had directed reinstatement and had denied back wages. The award of the Labour Court does not suffer from any infirmity necessitating interference under Article 226 of the Constitution of India.

The writ petition fails and is, accordingly, dismissed. No order as to costs.

23-04-2007

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